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Part A—Introduction

3.1 Scope Note

The principal source of Michigan traffic law is the Michigan Vehicle Code (MVC). The MVC clearly distinguishes the misdemeanor traffic offense from the felony and civil infraction. “It is a misdemeanor for a person to violate this act, unless that violation is by this act or other law of the state declared to be a felony or a civil infraction.” In other words, if the statute fails to declare the type of offense, it is deemed to be a misdemeanor. MCL 257.901(1); MSA 9.2601(1).

The Code of Criminal Procedure defines *misdemeanor* as “a violation of a penal law of this state that is not a felony, or a violation of an order, rule, or regulation of a state agency that is punishable by imprisonment or a fine that is not a civil fine.” MCL 761.1(h); MSA 28.843(h).

The chapter includes many of the most frequently occurring misdemeanor traffic offenses in the Michigan Vehicle Code. For ease of reference, these offenses have been grouped into the following categories:

- Misdemeanors Involving Accidents — Part B.
- License and Permit Violations — Part C.
- Title, Plate, Registration, and Insurance Violations — Part D.
- Other Misdemeanors in the Michigan Vehicle Code — Part E.

This chapter *does not* include:

- Civil infractions in the Vehicle Code. For a discussion of civil infractions, see Chapters 1 and 2 of this volume of the *Traffic Benchbook*.
- Misdemeanors and civil infractions regulating the operation of off-road vehicles, snowmobiles, marine vessels, and personal watercrafts. For a discussion of these offenses, see Chapters 4–6 of this volume of the *Traffic Benchbook*.
- Offenses involving drunk driving under MCL 257.625; MSA 9.2325 and driving with a suspended/revoked license under MCL 257.904; MSA 9.2604. All of these offenses (both felony and misdemeanor) are discussed in Chapters 1–5 of Volume 2 of the *Traffic Benchbook*.
- Traffic-related misdemeanor offenses found in other Michigan statutes, such as the Insurance Code, the Liquor Control Code, the Motor Carrier Safety Act, the Motor Carrier Act, or the Penal Code. These offenses are not included in any chapters of the *Traffic Benchbook*.

For easy reference, the discussion of each misdemeanor offense in this chapter includes:

- The name;
- The actual statute, or significant parts thereof;
- The elements of the crime;
- Criminal penalties;
- Secretary of State licensing sanctions; and,
- Issues of importance regarding that offense.

3.2 Courts with Jurisdiction Over Misdemeanor Traffic Offenses

The following courts have jurisdiction over misdemeanor traffic offenses:

- The district court has jurisdiction over misdemeanor offenses punishable by fine or imprisonment not exceeding one year, or both; and over ordinance and charter violations punishable by a fine or imprisonment, or both. MCL 600.8311; MSA 27A.8311.
- Any municipal court has jurisdiction over ordinance violations for all crimes, misdemeanors, and offenses committed within the limits of the city in which the court is located, punishable by a fine or imprisonment for not more than one year. MCL 730.551; MSA 27.4101.

- The family division of circuit court has jurisdiction over all misdemeanor offenses committed by juveniles under age 17. MCL 712A.2(a)(i); MSA 27.3178(598.2)(a)(i). See Miller, *Juvenile Traffic Benchbook*, (MJI, 1999), for a detailed treatment of the proceedings governing juvenile traffic actions.

3.3 Jurisdiction and Duties of District Court Magistrates

District court magistrates, when authorized by the chief judge, have the jurisdiction and duty to arraign and sentence upon pleas of guilty or nolo contendere for misdemeanor violations of the MVC when the maximum penalty does not exceed 93 days. MCL 600.8511(b); MSA 27A.8511(b). This jurisdiction, however, does not include authority to take pleas and sentence defendants convicted of a violation of MCL 257.625; MSA 9.2325, MCL 257.625m; MSA 9.2325(13), or a substantially corresponding local ordinance. For these drunk driving offenses, the magistrate has limited jurisdiction to arraign the defendant and set bond. *Id.*

3.4 Processing of Misdemeanor Traffic Offenses

Adjudication of misdemeanor violations follow rules of criminal procedure, which in turn are controlled by the fundamental due process rights provided by the U.S. and Michigan Constitutions. Procedural safeguards include the right to a jury trial, the right to counsel, proof beyond a reasonable doubt, and adherence to the rules of evidence. The question to be resolved by the court is whether the prosecution has proven guilt beyond a reasonable doubt.

The defendant driver who is charged with a misdemeanor pleads “guilty,” “not guilty,” or “nolo contendere.” A conviction is reported on the defendant’s criminal record. It is also reported to the Secretary of State and appears on the defendant’s driving record.

3.5 Criminal Penalties for Misdemeanor Traffic Offenses

Under the Michigan Vehicle Code, “[u]nless another penalty is provided in this act or by the laws of this state, a person convicted of a misdemeanor for the violation of this act shall be punished by a fine of not more than \$100.00, or by imprisonment for not more than 90 days, or both.” MCL 257.901(2); MSA 9.2601(2).

Effective October 1, 1999, MCL 257.204b(1)-(2); MSA 9.1904(2)(1)-(2) provides that attempted violations of the Vehicle Code shall be treated as completed offenses for purposes of imposing licensing sanctions and criminal penalties:

“(1) When assessing points, taking licensing or registration actions, or imposing other sanctions under this act for a conviction of an attempted violation of a law of this state, a local ordinance substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state, the secretary of state or the court shall treat the conviction the same as if it were a conviction for the completed offense.

“(2) The court shall impose a criminal penalty for a conviction of an attempted violation of this act or a local ordinance substantially corresponding to a provision of this act in the same manner as if the offense had been completed.”

For more information about attempted offenses under this provision, see Volume 2 of the *Traffic Benchbook*, Section 7.1.

3.6 Abstracts of Convictions

Within 14 days after conviction, or forfeiture of bail, or entry of a default judgment the court shall prepare and immediately forward to the Secretary of State an abstract of the court record. MCL 257.732(1)(a); MSA 9.2432(1)(a). The abstract shall be certified by signature, stamp, or facsimile signature to be true and correct. MCL 257.732(2); MSA 9.2432(2).

Abstracts of convictions are not required for non-moving violations that are not the basis for the Secretary of State’s suspension, revocation, or denial of a person’s operator’s or chauffeur’s license. MCL 257.732(15)(b); MSA 9.2432(15)(b).

MCL 257.732(3)(a)–(i); MSA 9.2432(3)(a)–(i) provides that the abstract shall be made on a form provided by the Secretary of State and shall include all of the following:

“(a) The name, address, and date of birth of the person charged or cited.

“(b) The number of the person’s operator’s or chauffeur’s license, if any.

“(c) The date and nature of the violation.

“(d) The type of vehicle driven at the time of the violation and, if the vehicle is a commercial motor vehicle, that vehicle’s group designation and indorsement classification.

“(e) The date of the conviction, finding, forfeiture, judgment, or civil infraction determination.

“(f) Whether bail was forfeited.

“(g) Any license restriction, suspension, or denial ordered by the court as provided by law.

“(h) The vehicle identification number and registration plate number of all vehicles that are ordered immobilized or forfeited.

“(i) Other information considered necessary to the secretary of state.”

3.7 Points

The misdemeanor conviction is entered on defendant’s driving record; points may also be assessed according to the schedule prescribed by statute. Assessing points is a mandatory function of the Secretary of State; it is not a function of the court. MCL 257.320a(1); MSA 9.2020(1)(1) lists the points that shall be entered by the Secretary of State for the different types of offenses.

MCL 257.320a(5); MSA 9.2020(1)(5) states:

“If more than 1 conviction, civil infraction determination, or probate court disposition results from the same incident, points shall be entered only for the violation that receives the highest number of points under this section.”

3.8 License Suspensions

The Michigan Vehicle Code provides that the Secretary of State shall immediately suspend a person’s license upon receiving a record of a person’s conviction for certain enumerated offenses. MCL 257.319; MSA 9.2019 lists the lengths of those suspensions.

If the Secretary of State receives records of more than one conviction of a person resulting from the same incident, a suspension shall be imposed only for the violation to which the longest period of suspension applies under this section. MCL 257.319(11); MSA 9.2019(11).

The Secretary of State may suspend or revoke the license of a resident of this state upon receiving notice of the conviction or determination of responsibility of that person in an administrative adjudication in another state for a violation in that state which, if committed in this state, would be grounds for the suspension or revocation of the license. MCL 257.318; MSA 9.2018.

The Secretary of State may suspend or revoke the right of a nonresident to operate a motor vehicle in this state for the same reasons the license of a resident driver may be suspended or revoked. MCL 257.317; MSA 9.2017.

Part B—Misdemeanors Involving Accidents

3.9 Disclosing the Name or Identity of a Person from an Accident Report without Authorization

A. Applicable Statute Paraphrased

MCL 257.624; MSA 9.2324 provides:

An accident report required under the MVC shall not be available for use in a court action, or admissible as evidence in a court, or before any other tribunal, board, agency, or person. But the report may be used to furnish statistical information on the number and cause of accidents, or by the office of highway safety for a scientific study or research project.

All information, records, reports, statements, notes, memoranda, or other data collected for scientific study and research authorized by the office of highway safety shall be used solely for the purpose of medical or scientific research. The name or identity of a person shall not be disclosed unless the person authorizes disclosure in writing. A person who discloses the name or identity of another person without that other person's written authorization is guilty of a misdemeanor, punishable by a fine of not less than \$50.

B. Elements of the Offense

1. Defendant disclosed the name or identity of another person from information, records, reports, statements, notes, memoranda, or other data collected for scientific study and research authorized by the office of highway safety; and,
2. Defendant did so without the other person's written authorization.

C. Criminal Penalties

Fine of not less than \$50. MCL 257.624(3); MSA 9.2324(3).

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. See MCL 257.321a; MSA 9.2021(1). At the present time this is not a reportable offense unless the defendant fails to answer a citation or a notice to appear, or fails to comply with an order or judgment, in which case the Secretary of State shall suspend the license.

3.10 Failing to Give Information and Aid at the Scene of an Accident

A. Applicable Statute

MCL 257.619; MSA 9.2319 provides:

“The driver of any vehicle who knows or has reason to believe that he [or she] has been involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his [or her] name, address, and the registration number of the vehicle he [or she] is driving, also the name and address of the owner, and exhibit his [or her] operator’s or chauffeur’s license to the person struck or the driver or occupants of any vehicle collided with and shall render to any person injured in such accident reasonable assistance in securing medical aid or transportation of injured person or persons.”

B. Elements of the Offense

1. Defendant driver knew or had reason to believe he or she was involved in an accident resulting in injury or death to a person, or damage to a vehicle driven or attended by another; and
2. Defendant did stop but failed to do all of the following:
 - a. give information to other persons involved in the accident;
 - b. give aid to injured persons involved in the accident; and
 - c. exhibit his or her driver’s license to other persons involved in the accident.

The information must be given to the person struck, if that person was not in a motor vehicle, or to the driver or occupants of any vehicle collided with if it is a multi-vehicle accident.

The information that must be given includes:

- The driver’s name and address.
- The owner’s name and address.
- The vehicle registration number.

The aid that must be given includes:

- Reasonable assistance in securing medical aid.
- Transportation of injured persons.

C. Criminal Penalties

MCL 257.901(2); MSA 9.2601(2) provides for:

- Imprisonment up to 90 days; or,
- Fine up to \$100; or,
- Both.

D. Licensing Sanctions

Under MCL 257.320a(1)(c); MSA 9.2020(1)(1)(c), 6 points are assessed on the driver's record when a driver is convicted of "failing to stop and disclose identity at the scene of an accident when required by law." It is not clear whether the same is true when the driver stops and gives information, but does not give aid.

E. Issues

Where the term "accident" appears in criminal statutes that forbid leaving the scene of an accident, it includes accidents that were caused by intentional and unintentional conduct; the cause of the accident is not a concern. *People v Martinson*, 161 Mich App 55, 57 (1987).

A person, other than the driver, in the motor vehicle at the time of the accident may be properly charged with aiding and abetting in the commission of leaving the scene of an accident without rendering necessary assistance to an injured person. And if the person is found guilty, he or she is subject to the same punishment as the principal. *People v Hoaglin*, 262 Mich 162, 172 (1933).

3.11 Failing to Report Accident Involving Death, Personal Injury, or Property Damage of \$400 or More

A. Applicable Statute

MCL 257.622; MSA 9.2322 provides:

"The driver of a motor vehicle involved in an accident that injures or kills any person, or that damages property to an apparent extent totaling \$400.00 or more, shall immediately report that accident at the nearest or most convenient police station, or to the nearest or most convenient police officer...."

B. Elements of the Offense

1. Defendant driver was involved in an accident resulting in personal injury or death; or,
2. Defendant was involved in an accident resulting in property damage to an apparent extent of \$400 or more (not actual damage amount); and,
3. Defendant failed to immediately report the accident to the police.

C. Criminal Penalties

MCL 257.901(2); MSA 9.2601(2) provides for:

- Imprisonment up to 90 days; or,
- Fine up to \$100; or,
- Both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. See MCL 257.320a; MSA 9.2020(1). At the present time this is not a reportable offense, unless the defendant fails to answer a citation or a notice to appear, or fails to comply with an order or judgment, in which case the Secretary of State shall suspend the license.

E. Issues

Where the term “accident” appears in criminal statutes that forbid leaving the scene of an accident, it includes accidents that were caused by intentional and unintentional conduct; the cause of the accident is not a concern. *People v Martinson*, 161 Mich App 55, 57 (1987).

The purpose of this reporting requirement is to apprise the police that an accident has occurred and to furnish statistical information as to the number and cause of accidents. *People v Schmidt*, 196 Mich App 104, 107 (1992).

3.12 Garage or Repair Shop Failing to Report Evidence of Accident or Bullet

A. Applicable Statute

MCL 257.623; MSA 9.2323 provides:

“The person in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been involved in an accident or having been struck by any bullet shall report the same

to the nearest police station or sheriff's office immediately after such motor vehicle is received, giving the engine number, registration number and the name and address of the owner, and/or operator of such vehicle."

B. Elements of the Offense

1. Defendant was in charge of a garage or repair shop;
2. A motor vehicle was brought showing evidence of an accident or bullet; and,
3. Defendant failed to immediately report evidence of an accident or bullet to the police, including engine number, registration number, and name and address of vehicle owner or operator.

C. Criminal Penalties

MCL 257.901(2); MSA 9.2601(2) provides for:

- Imprisonment up to 90 days; or,
- Fine up to \$100; or,
- Both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. See MCL 257.321a; MSA 9.2021(1). At the present time this is not a reportable offense unless the defendant fails to answer a citation or a notice to appear, or fails to comply with an order or judgment, in which case the Secretary of State shall suspend the license.

3.13 Leaving the Scene of an Accident Resulting in Damage to Fixtures That Are Upon or Adjacent to a Highway

A. Applicable Statute

MCL 257.621; MSA 9.2321 provides:

"The driver of any vehicle involved in an accident resulting only in damage to fixtures legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such accident and of his [or her] name and address and of the registration number of the vehicle he [or she] is driving and shall upon request exhibit his [or her] operator's or chauffeur's license and, if such owner cannot be found, shall forthwith report such

accident to the nearest or most convenient police officer....”

B. Elements of the Offense

1. Defendant driver was involved in an accident resulting only in damage to fixtures;
2. The fixtures were located legally on or adjacent to a highway; and,
3. Defendant failed to take reasonable steps to locate and give notice to the owner or person in charge of the fixtures, or,
4. Defendant could not find the owner or person in charge of the fixtures and failed to report the accident to a police officer.

The information must be given to the driver or occupants of any vehicle involved in the accident.

The information that must be given includes:

- The driver’s name and address.
- The vehicle registration number.
- Showing of driver’s license, if requested.

C. Criminal Penalties

MCL 257.901(2); MSA 9.2601(2) provides for:

- Imprisonment up to 90 days; or,
- Fine up to \$100; or,
- Both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. See MCL 257.321a; MSA 9.2021(1). At the present time this is not a reportable offense unless the defendant fails to answer a citation or a notice to appear, or fails to comply with an order or judgment, in which case the Secretary of State shall suspend the license.

The lack of points for this offense may appear inconsistent with similar misdemeanor offenses that require assessment of six points. See for example, Leaving the Scene of an Accident with an Attended or Unattended Vehicle under MCL 257.620; MSA 9.2320, which is discussed at Section 3.16.

A 1977 Attorney General Opinion explains this disparity by pointing out that Vehicle Code §320a(1)(c) assesses six points on the driver’s record when a

driver fails to “stop and disclose his or her identity at the scene of an accident when required by law.” The Attorney General Opinion concludes:

MCL 257.621; MSA 9.2321 “requires a driver to ‘take reasonable steps to locate and notify the owner’ of property damaged in the accident. Unlike [§620], this section includes no requirement the these steps be taken ‘immediately’ or ‘then and there’. Such ‘reasonable steps’...may very well involve leaving the scene of an accident as soon as possible where it is obvious that there is no one in the vicinity who could be the ‘owner or person in charge’ of the damaged property, and to whom notice could be given. Therefore...the Secretary of State should not assess 6 points against a driver convicted of violating §621.”

OAG, 1977, No 5137, p 2–3 (March 22, 1977).

E. Issues

Where the term “accident” appears in criminal statutes that forbid leaving the scene of an accident, it includes accidents that were caused by intentional and unintentional conduct; the cause of the accident is not a concern. *People v Martinson*, 161 Mich App 55, 57 (1987).

3.14 Leaving the Scene of an Accident Resulting in Personal Injury

A. Applicable Statutes

MCL 257.617a; MSA 9.2317(1) provides:

“The driver of a vehicle who knows or has reason to believe that he [or she] has been involved in an accident upon either public or private property, when the property is open to travel by the public, resulting in injury to a person shall immediately stop his [or her] vehicle at the scene of the accident and shall remain there until the requirements of [MCL 257.619; MSA 9.2319] are fulfilled. Every stop shall be made without obstructing traffic more than is necessary.”

“A person failing to stop or to comply with those requirements shall be guilty of a misdemeanor, punishable by imprisonment for not more than 1 year or by a fine of not more than \$1,000.00, or both.”

“The Secretary of State shall suspend the operator’s or chauffeur’s license of the person convicted under this section as provided in section 319.”

MCL 257.619; MSA 9.2319 provides:

“The driver of any vehicle who knows or has reason to believe that he [or she] has been involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his [or her] name, address, and the registration number of the vehicle he is driving, also the name and address of the owner, and exhibit his [or her] operator’s or chauffeur’s license to the person struck or the driver or occupants of any vehicle collided with and shall render to any person injured in such accident reasonable assistance in securing medical aid or transportation of injured person or persons.”

B. Elements of the Offense

1. Defendant driver knew or had reason to believe he or she was involved in an accident resulting in injury to a person;
2. The accident occurred on either public or private property, when the property was open to travel by the public; and,
3. Defendant failed to stop and remain at the scene of the accident long enough to accomplish the following:
 - Give information to other persons involved in the accident;
 - Give aid to injured persons involved in the accident; and,
 - Exhibit his or her driver’s license to other persons involved in the accident.

The information must be given to the person struck, if that person was not in a motor vehicle, or to the driver or occupants of any vehicle collided with if it is a multi-vehicle accident.

The information that must be given includes:

- The driver’s name and address.
- The owner’s name and address.
- The vehicle registration number.

The aid that must be given includes:

- Reasonable assistance in securing medical aid.
- Transportation of injured persons.

C. Criminal Penalties

MCL 257.617a(2); MSA 2.2317(1)(2) provides for:

- Imprisonment up to one year; or,
- Fine up to \$1,000; or,
- Both.

D. Licensing Sanctions

1. Six points. MCL 257.320a(1)(c); MSA 9.2020(1)(c).
2. 90 day suspension of defendant's license. MCL 257.319(3)(a); MSA 9.2019(3)(a).

E. Issues

Where the term “accident” appears in criminal statutes that forbid leaving the scene of an accident, it includes accidents that were caused by intentional and unintentional conduct; the cause of the accident is not a concern. *People v Martinson*, 161 Mich App 55, 57 (1987).

An intent to injure is not a necessary element of failing to stop and identify at the scene of a personal injury accident. *People v Strickland*, 79 Mich App 454, 456 (1977).

A person, other than the driver, in the motor vehicle at the time of the accident may be properly charged with aiding and abetting in the commission of leaving the scene of an accident without rendering necessary assistance to an injured person. And if the person is found guilty, he or she is subject to the same punishment as the principal. *People v Hoaglin*, 262 Mich 162, 169 (1933).

Double jeopardy was not violated when defendant was convicted of both assault with a deadly weapon and leaving the scene of a personal injury accident, when defendant pinned victim between two cars and drove away. The two constituted different crimes; they were not submitted to the jury as alternatives or relied on by defense counsel as such. *People v Martinson, supra*, 161 Mich App at 58.

Double jeopardy was not violated when defendant was charged with both felonious driving and leaving the scene of an accident resulting in personal injury, when defendant was speeding while pursuing another motor vehicle and struck an oncoming motorcycle. A non-negotiated plea of guilty on the one charge did not prevent trying the other. *People v Goans*, 59 Mich App 294, 295-296 (1975).

3.15 Leaving the Scene of an Accident Resulting in Vehicle Damage Only

A. Applicable Statutes

MCL 257.618; MSA 9.2318 provides:

“The driver of any vehicle who knows or who has reason to believe that he [or she] has been involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident and shall remain thereat until he [or she] has fulfilled the requirements of [MCL 257.619; MSA 9.2319]. Every such stop shall be made without obstructing traffic more than is necessary. Any person failing to stop or comply with said requirements under such circumstances shall be guilty of a misdemeanor.”

MCL 257.619; MSA 9.2319 provides:

“The driver of any vehicle who knows or has reason to believe that he [or she] has been involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his [or her] name, address, and the registration number of the vehicle he is driving, also the name and address of the owner, and exhibit his [or her] operator’s or chauffeur’s license to the person struck or the driver or occupants of any vehicle collided with and shall render to any person injured in such accident reasonable assistance in securing medical aid or transportation of injured person or persons.”

B. Elements of the Offense

1. Defendant driver knew or had reason to believe he or she was involved in an accident resulting only in damage to a vehicle driven or attended by another; and.
2. Defendant failed to stop and remain at the scene of the accident long enough to accomplish the following:
 - Give information to other persons involved in the accident; and,
 - Exhibit his or her driver’s license to other persons involved in the accident.

The information must be given to the driver or occupants of any vehicle involved in the accident.

The information that must be given includes:

- The driver's name and address.
- The owner's name and address.
- The vehicle registration number.

C. Criminal Penalties

MCL 257.901(2); MSA 9.2601(2) provides for:

- Imprisonment up to 90 days; or,
- Fine up to \$100; or,
- Both.

Licensing sanctions:

Six points. MCL 257.320a(1)(c); MSA 9.2020(1)(1)(c).

D. Issues

Although Vehicle Code §618 requires the defendant to comply with the requirements of §619, the giving of aid to injured persons is obviously not necessary when the accident results in vehicle damage only. If the defendant did stop, but failed to give information, he or she would be guilty of Failing to Give Information and Aid at the Scene of an Accident under MCL 257.619; MSA 9.2322. No points would be assessed. See Section 3.10.

Where the term “accident” appears in criminal statutes that forbid leaving the scene of an accident, it includes accidents that were caused by intentional and unintentional conduct; the cause of the accident is not a concern. *People v Martinson*, 161 Mich App 55, 57 (1987).

3.16 Leaving the Scene of an Accident with an Attended or Unattended Vehicle

A. Applicable Statute

MCL 257.620; MSA 9.2320 provides:

“The driver of any vehicle which collides upon either public or private property with any vehicle which is attended or unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and the owner of the vehicle striking the vehicle, or if such owner [of the other

vehicle] cannot be located, shall forthwith report it to the nearest or most convenient police officer.”

B. Elements of the Offense

1. Defendant driver struck another vehicle, attended or unattended;
2. The accident occurred on either public or private property; and,
3. Defendant failed to stop and locate the driver or owner of the other vehicle and give defendant’s name and address and the name and address of the owner of the vehicle defendant was driving, or,
4. Defendant did stop, but could not locate owner of other vehicle, and failed to report the accident to a police officer.

C. Criminal Penalties

MCL 257.901(2); MSA 9.2601(2) provides for:

- Imprisonment up to 90 days; or,
- Fine up to \$100; or,
- Both.

D. Licensing Sanctions

Six points. MCL 257.320a(1)(c); MSA 9.2020(1)(1)(c).

The assessment of six points for this offense may appear inconsistent with similar misdemeanor offense that do not require assessment of any points. See for example, Leaving the Scene of an Accident Resulting in Damage to Fixtures Upon a Highway, discussed at Section 3.13.

A 1977 Attorney General Opinion explains this disparity by pointing out that Vehicle Code §320a(1)(c) assesses six points on the driver’s record when a driver fails to “stop and disclose his or her identity at the scene of an accident when required by law.” The Attorney General Opinion concludes:

Under MCL 257.620; MSA 9.2320, “a driver involved in a collision with an attended or unattended vehicle must [immediately] stop and identify himself or herself. Only if he [or she] is unable to locate the operator or owner of the vehicle is he [or she] permitted to pursue the alternative of reporting the accident to a police officer. Therefore, if a driver is convicted of violating this section, he [or she] is convicted of failing to identify himself [or herself] at the scene of an accident.”

OAG, 1977, No 5137, pp 2–3, (March 22, 1977).

Part C — License and Permit Violations

3.17 Allowing Another to Operate in Violation of the Michigan Vehicle Code

A. Applicable Statute

MCL 257.326; MSA 9.2026 provides:

“No person shall knowingly authorize or permit a motor vehicle owned by him [or her] or under his [or her] control to be driven by any person in violation of any of the provisions of this act.”

B. Elements of the Offense

1. Defendant’s motor vehicle was driven by another in violation of the Michigan Vehicle Code; and,
2. Defendant knowingly authorized or permitted such.

C. Criminal Penalties

MCL 257.901(2); MSA 9.2601(2) provides for:

- Imprisonment up to 90 days; or,
- Fine up to \$100; or,
- Both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. See MCL 257.321a; MSA 9.2021(1). At the present time this is not a reportable offense unless the defendant fails to answer a citation or a notice to appear, or fails to comply with an order or judgment, in which case the Secretary of State shall suspend the license.

3.18 Causing or Permitting an Unlicensed Minor to Drive

A. Applicable Statute

MCL 257.325; MSA 9.2025 provides:

“It shall be unlawful for any person to cause or knowingly permit any minor to drive a motor vehicle upon a highway as an operator, unless the minor has

first obtained a license to drive a motor vehicle under the provisions of this chapter.”

B. Elements of the Offense

1. A minor drove a motor vehicle on a highway;
2. At that time, the minor was not licensed to drive; and,
3. Defendant caused or knowingly permitted such.

C. Criminal Penalties

MCL 257.901(2); MSA 9.2601(2) provides for:

- Imprisonment up to 90 days; or,
- Fine up to \$100; or,
- Both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. See MCL 257.321a; MSA 9.2021(1). At the present time this is not a reportable offense unless the defendant fails to answer a citation or a notice to appear, or fails to comply with an order or judgment, in which case the Secretary of State shall suspend the license.

3.19 Driving in Violation of a Restricted License

A. Applicable Statute Paraphrased

Because of extenuating circumstances, special reasons, or need, the Secretary of State may recommend a restricted license. The restricted license may require special mechanical control devices on the motor vehicle, or may restrict driving to certain areas and times, or may impose other conditions necessary to assure the safe operation of a motor vehicle. MCL 257.312(1); MSA 9.2012(1).

MCL 257.312(4); MSA 9.2012(4) provides:

“A person who violates a restriction imposed in a restricted license issued to that person is guilty of a misdemeanor. This subsection shall not apply to a person who is at least 14 years of age and under 16 years of age.”

B. Elements of the Offense

1. Defendant's license was issued to him or her with restrictions or conditions necessary for the safe operation of a motor vehicle; and,
2. Defendant drove in violation of a restriction or condition.

C. Criminal Penalties

MCL 257.901(2); MSA 9.2601(2) provides for:

- Imprisonment up to 90 days; or,
- Fine up to \$100; or,
- Both.

D. Licensing Sanctions

1. Two points. MCL 257.320a(1)(n); MSA 9.2020(1)(1)(n). The Secretary of State has interpreted "[a]ll other moving violations" to include this offense. See OAG, 1965, No 4330 (February 3, 1965).
2. MCL 257.312(3); MSA 9.2012(3) provides:

"The Secretary of State, upon receiving satisfactory evidence of a violation of the restrictions of the license, may suspend or revoke the license."

3.20 Driving With an Invalid License**A. Applicable Statutes:**

MCL 257.301(1); MSA 9.2001(1) provides:

"Except as provided in this act, a person shall not drive a motor vehicle upon a highway in this state unless that person has a valid operator's or chauffeur's license with the appropriate group designation and endorsements for the type or class of vehicle being driven or towed."

MCL 257.301(2); MSA 9.2001(2) provides:

"A person shall not receive a license to operate a motor vehicle until that person surrenders to the Secretary of State all valid licenses to operate a motor vehicle issued to that person by this state or any state or certifies that he or she does not possess a valid license. The Secretary of State shall notify the issuing state that the licensee is now licensed in this state."

MCL 257.301(3); MSA 9.2001(3) provides:

“A person shall not have more than one valid license.”

MCL 257.301(4); MSA 9.2001(4) provides:

“A person shall not drive a motor vehicle as a chauffeur unless that person holds a valid chauffeur’s license. A person shall not receive a chauffeur’s license until that person surrenders to the Secretary of State a valid operator’s or chauffeur’s license issued to that person by this or any state or certifies that he or she does not possess a valid license.”

MCL 257.301(5); MSA 9.2001(5) provides:

“A person holding a valid chauffeur’s license need not procure an operator’s license.”

B. Elements of the Offense

1. Defendant drove a motor vehicle on the highway; and,
2. At that time, defendant did not have a valid license.

C. Criminal Penalties

MCL 257.901(2); MSA 9.2601(2) provides for:

- Imprisonment up to 90 days; or,
- Fine up to \$100; or,
- Both.

D. Licensing Sanctions

Two points. MCL 257.320a(1)(n); MSA 9.2020(1)(1)(a). The Secretary of State has interpreted “[a]ll other moving violations” to include this offense. See OAG, 1965, No 4330 (February 3, 1965).

3.21 Driving Without a License

A. Applicable Statute

MCL 257.904a; MSA 9.2604(1) provides:

“Any person, not exempt from license under this act, who shall operate a motor vehicle upon the highways of this state and who is unable to show that he or she

has been issued a license to operate a motor vehicle by any state or foreign country valid within the 3 years preceding is guilty of a misdemeanor, and upon conviction shall be punished by imprisonment for not more than 90 days, or by a fine of not less than \$50.00 nor more than \$100.00, or both. Any person convicted of a second offense under this section shall be punished by imprisonment for not less than 2 nor more than 90 days, or by a fine of \$100.00, or both.”

B. Elements of the Offense

1. Defendant operated a motor vehicle on the highways of this state;
2. At that time, defendant was unable to show that he or she has been issued a license to operate a motor vehicle by any state or foreign country valid within the past 3 years; and,
3. Defendant was not exempt from the required license under this act. (See exempt persons under MCL 257.302; MSA 9.2002).

C. Criminal Penalties

MCL 257.904a; MSA 9.2604(1) provides the following penalties:

1. First Offense:

- Imprisonment up to 90 days; or,
- Fine of \$100; or,
- Both.

2. Second or Later Offense:

- Imprisonment not less than 2 days or more than 90 days; or,
- Fine not less than \$100; or,
- Both.

D. Licensing Sanctions

Two points. MCL 257.320a(1)(n); MSA 9.2020(1)(1)(a). The Secretary of State has interpreted “[a]ll other moving violations” to include this offense. See OAG, 1965, No 4330 (February 3, 1965).

3.22 Driving Without a License in Possession

A. Applicable Statute

MCL 257.311; MSA 9.2011 provides:

“The licensee shall have his or her operator’s or chauffeur’s license, or the receipt described in section 311a, in his or her immediate possession at all times when operating a motor vehicle, and shall display the same upon demand of any police officer, who shall identify himself or herself as such.”

B. Elements of the Offense

1. Defendant, a licensed driver, operated a motor vehicle; and,
2. At that time, defendant did not have his or her license in immediate possession, or,
3. Defendant failed to display his or her license on demand of an identified police officer.

C. Criminal Penalties

MCL 257.901(2); MSA 9.2601(2) provides for:

- Imprisonment up to 90 days; or,
- Fine up \$100; or,
- Both.

However, if the defendant did not have his or her license in immediate possession, the court shall waive the fine and costs on receipt of certification by a law enforcement agency that the defendant, before the appearance date on the citation, has produced his or her license and that the license was valid on the date the violation occurred. MCL 257.901a; MSA 9.2601(1).

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. See MCL 257.321a; MSA 9.2021(1). At the present time this is not a reportable offense unless the defendant fails to answer a citation or a notice to appear, or fails to comply with an order or judgment, in which case the Secretary of State shall suspend the license.

E. Issues

A person is charged with this offense when they have driving privileges and a valid license, but they do not have the license in immediate possession at the time of the violation.

The receipt described in Vehicle Code §311a is issued by the court to a person who is accused of a misdemeanor or ordinance violation, and who is required to surrender his or her license as a condition of bail. The receipt has the same effect as the license in granting driving privileges, but that effect expires either on the date specified on the receipt by the court or on the date on which the license expires, whichever date occurs first.

3.23 Reporting a False Address Change to the Secretary of State

A. Applicable Statute

1999 PA 118, effective April 1, 2000, created the following new misdemeanor offenses found in MCL 257.315(4)–(5); MSA 9.2015(4)–(5):

“(4) A person shall not knowingly report a change of address to the secretary of state for himself or herself that is not his or her residence address. A person shall not knowingly report a change of address to the secretary of state for another person without the consent of the other person. A person who is convicted of a violation of this subsection is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of \$1,000.00, or both. Upon receiving the abstract of conviction under this subsection, the secretary of state may suspend the person’s operator’s or chauffeur’s license for 6 months. The secretary of state shall not issue a restricted license to the person during the suspension.

“(5) Upon a second or subsequent conviction under subsection (4), a person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of \$5,000.00 or both. Upon receiving the abstract of a second or subsequent conviction under subsection (4), the secretary of state shall revoke the person’s operator’s or chauffeur’s license.”

B. Elements of the Offense

1. Defendant reported a change of address to the Secretary of State that was not his or her residence address; or,
2. Defendant reported a change of address to the Secretary of State for another person without the consent of the other person.

C. Criminal Penalties

MCL 257.315(4); MSA 9.2015(4) provides the following penalties for a first offense:

- Imprisonment up to 93 days; or,
- Fine up to \$1000; or,
- Both.

MCL 257.315(5); MSA 9.2015(5) provides the following penalties for a second or subsequent offense:

- Imprisonment up to 93 days; or,
- Fine up to \$5000; or,
- Both.

D. Licensing Sanctions

1. Upon receiving an abstract of conviction for a first offense, the Secretary of State may suspend the person's license for up to six months. The Secretary of State shall not issue a restricted license during the period of this suspension. MCL 257.315(4); MSA 9.2015(4).
2. Upon receiving an abstract of conviction for a second offense, the Secretary of State shall revoke the person's license. MCL 257.315(5); MSA 9.2015(5).

E. Issues

1999 PA 118, effective April 1, 2000, decriminalized the offenses of failing to change a person's address on his or her driver's license. MCL 257.315(1) and (3); MSA 9.2015(1) and (3). See Section 2.22 of this volume for a summary of that offense.

“Under the Michigan Vehicle Code, the defendant has a duty to show a correct address on his [or her] operator's license. This duty exists even though the time may not have arrived when the license itself needs to be renewed.” *Hamilton v Gordon*, 135 Mich App 289, 294 (1984).

3.24 Reproducing, Altering, Counterfeiting, Forging, or Duplicating a License, or Using Such License, with Intent to Commit a Crime

A. Applicable Statute

MCL 257.310(7)(a)–(b); MSA 9.2010(7)(a)–(b) provides:

“(7) A person who intentionally reproduces, alters, counterfeits, forges, or duplicates a license photograph, the negative of a photograph, an image, a license, or a part of a license, or who uses a license or photograph that has been reproduced, altered, counterfeited, forged, or duplicated is subject to the following:

(a) If the intent of the reproduction, alteration, counterfeiting, forging, duplication, or use was to commit or aid in the commission of an offense punishable by imprisonment for 1 or more years, the person committing the reproduction, alteration, counterfeiting, forging, duplication, or use is guilty of a misdemeanor, punishable by imprisonment for a period equal to the imprisonment that could be imposed for the commission of the offense the person had the intent to aid or commit. The court may also assess a fine of not more than \$10,000.00 against the person.

(b) If the intent of the reproduction, alteration, counterfeiting, forging, duplication, or use was to commit or aid in the commission of an offense punishable by imprisonment for not more than 1 year, the person committing the reproduction, alteration, counterfeiting, forging, duplication, or use is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or a fine of not more than \$1,000.00, or both.”

B. Elements of the Offense

1. Defendant reproduced, altered, counterfeited, forged, or duplicated a license photograph, the negative of a photograph, a license, or a part of a license; or,
2. Defendant used a reproduced, altered, counterfeited, forged, or duplicated license; and,

3. With such license, defendant intended to commit or aid in the commission of a crime.

C. Criminal Penalties

1. If the intended crime is punishable by imprisonment for more than one year, MCL 257.310(7)(a); MSA 9.2010(7)(a) provides the following penalties:
 - Imprisonment for a period equal to that which could be imposed for the commission of the crime; and,
 - Fine of up to \$10,000.
2. If the intended crime is punishable by imprisonment for not more than one year, MCL 257.310(7)(b); MSA 9.2010(7)(b) provides the following penalties:
 - Imprisonment up to one year; or,
 - Fine up to \$1,000; or,
 - Both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. See MCL 257.321a; MSA 9.2021(1). At the present time this is not a reportable offense unless the defendant fails to answer a citation or a notice to appear, or fails to comply with an order or judgment, in which case the Secretary of State shall suspend the license.

E. Issues

Even though §310(7)(a) says the defendant shall be guilty of a misdemeanor, the penalty provision states that the period of imprisonment is equal to that which could be imposed for the crime the defendant intended to commit.

3.25 Unlawful Use or Display of License

A. Applicable Statute Paraphrased

MCL257.324(1) and (2); MSA 9.2024(1) and (2) provides that:

1. A person shall not do any of the following:
 - a. Display or possess any license knowing it to be fictitious, canceled, revoked, suspended, or altered.
 - b. Lend or knowingly permit another person to use one's license.
 - c. Display or represent another person's license as one's own.

- d. Fail or refuse to surrender to the department on demand, any license which has been suspended, canceled, or revoked.
- e. Use a false or fictitious name or address in an application for a license or for any renewal or duplicate, or knowingly make a false statement, or knowingly conceal a material fact or otherwise commit a fraud in making application.
- f. Alter any license so as to knowingly make a false statement, or knowingly conceal a material fact in order to misrepresent another person's license as one's own.
- g. Use or possess a license, in committing a crime, that has been altered or that is used to knowingly make a false statement, or to knowingly conceal a material fact in order to misrepresent another person's license as one's own.
- h. Furnish to a peace officer false, forged, fictitious, or misleading verbal or written information identifying oneself as another person, if detained for a violation of this act.

2. Any license issued under an application which is untrue, or which contains false statements as to any material matters, shall be absolutely void from the date of issuance. The person who was issued the license shall be deemed unlicensed and the license shall be taken on request or order of the Secretary of State.

B. Elements of the Offense

The statute, as paraphrased, clearly sets out the elements.

C. Criminal Penalties

MCL 257.901(2); MSA 9.2601(2) provides for:

- Imprisonment up to 90 days; or,
- Fine up to \$100; or,
- Both.

D. Licensing Sanctions

1. First Offense: 90 day mandatory license suspension. MCL 257.324(3); MSA 9.2024(3).
2. Second Offense within seven years: One year mandatory license suspension. *Id.*

Part D—Title, Plate, Registration, and Insurance Violations

3.26 Failing to Apply for Registration and Certificate of Title

A. Applicable Statute

MCL 257.217(1); MSA 9.1917(1) provides:

“An owner of a vehicle that is subject to registration under this act shall apply to the secretary of state, upon an appropriate form furnished by the secretary of state, for the registration of the vehicle and issuance of a certificate of title for the vehicle....The application shall be accompanied by the required fee. An application for a certificate of title shall bear the signature of the owner written with pen and ink. The application shall contain... [certain information].”

B. Elements of the Offense

1. Defendant owned a vehicle that was of a type required to be registered with the Secretary of State; and,
2. Defendant failed to register the vehicle, or failed to apply for certificate of title, or failed to pay the required fee.

C. Criminal Penalties

MCL 257.901(2); MSA 9.2601(2) provides for:

- Imprisonment up to 90 days; or,
- Fine up to \$100; or,
- Both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. See MCL 257.321a; MSA 9.2021(1). At the present time this is not a reportable offense unless the defendant fails to answer a citation or a notice to appear, or fails to comply with an order or judgment, in which case the Secretary of State shall suspend the license.

E. Issues

The title transfer provisions of the Michigan Vehicle Code must be complied with even in the case of an inoperable motor vehicle sold for junk or salvage purposes. *Holtzlander v Brownell*, 182 Mich App 716, 720 (1990).

3.27 Failing to Transfer Title

A. Applicable Statutes

MCL 257.234(1)–(2); MSA 9.1934(1)–(2) provides:

“(1) The purchaser or transferee, unless the person is a licensed dealer, shall present or cause to be presented the certificate of title and registration certificate if plates are being transferred to another vehicle, assigned as provided in this act, to the secretary of state accompanied by the fees as provided by law, whereupon a new certificate of title and registration certificate shall be issued to the assignee. The certificate of title shall be mailed or delivered to the owner or another person the owner may direct in a separate instrument in a form the secretary of state shall prescribe.

“(2) Unless the transfer is made and the fee paid within 15 days, the vehicle shall be considered to be without registration, the secretary of state may repossess the license plates, and transfer of the vehicle ownership may be effected and a valid registration acquired thereafter only upon payment of a transfer fee of \$15.00 in addition to the fee provided for in [MCL 257.806(1)–(3); MSA 9.2506(1)–(3)].”

MCL 257.806(1)–(3); MSA 9.2506(1)–(3) provides the following:

1. An application fee of \$10 is required for a certificate of title or for a duplicate certificate of title. An additional fee of \$5 is required if the applicant requests special expeditious treatment.
2. A fee of \$10 is required for a special identifying number after an engine, serial, or vehicle number has been altered, removed, or defaced.
3. A fee of 50¢ is required for the scrap tire regulatory fund.

B. Elements of the Offense

1. Defendant was the purchaser or transferee of a motor vehicle required to be registered with the Secretary of State; and,
2. Defendant failed to present the certificate of title and registration certificate if plates are being transferred to another vehicle to the Secretary of State with the appropriate fees within 15 days.

C. Criminal Penalties

MCL 257.901(2); MSA 9.2601(2) provides for:

- Imprisonment up to 90 days; or,
- Fine up to \$100; or,
- Both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. See MCL 257.321a; MSA 9.2021(1). At the present time this is not a reportable offense unless the defendant fails to answer a citation or a notice to appear, or fails to comply with an order or judgment, in which case the Secretary of State shall suspend the license.

E. Issues

The title transfer provisions of the Michigan Vehicle Code must be complied with even in the case of an inoperable motor vehicle sold for junk or salvage purposes. *Holtzlander v Brownell*, 182 Mich App 716, 720 (1990).

3.28 Forging Proof of Insurance

A. Applicable Statute

MCL 257.905; MSA 9.2605 provides:

“A person who forges, or without authority signs, any evidence of ability to respond in damages as required by the secretary of state...is guilty of a misdemeanor, punishable by a fine of not less than \$100.00 nor more than \$1,000.00, or imprisonment for not more than 90 days, or both....”

B. Elements of the Offense

Defendant forged, or without authority signed, proof of insurance.

C. Criminal Penalties

MCL 257.905; MSA 9.2605 provides for:

- Imprisonment up to 90 days; or,
- Fine of not less than \$100 or more than \$1,000; or,
- Both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. See MCL 257.321a; MSA 9.2021(1). At the present time this is not a reportable offense unless the defendant fails to answer a citation or a notice to appear, or fails to comply with an order or judgment, in which case the Secretary of State shall suspend the license.

E. Issues

There are four different offenses in Michigan dealing with an owner's obligation to have no-fault automobile insurance. Because these offenses are often confused with one another, they are listed here in order of severity:

1. No Proof of Insurance is a civil infraction under MCL 257.328(1); MSA 9.2028(1). See Section 2.19 for this civil infraction.
2. Forging Proof of Insurance is a 90 day misdemeanor under MCL 257.905; MSA 9.2605.
3. Producing False Evidence of Insurance is a one year misdemeanor under MCL 257.328(5); MSA 9.2028(5). See Section 3.31 for this offense.
4. Operating a Motor Vehicle Without Insurance is a one year misdemeanor under the Insurance Code, MCL 500.3102(2); MSA 24.13102(2). This offense is not included in the *Traffic Benchbook*.

3.29 Invalid or No Registration Plate

A. Applicable Statute

MCL 257.255(1)–(2); MSA 9.1955(1)–(2) provide:

“(1)... [A] person shall not operate, nor shall an owner knowingly permit to be operated, upon any highway, a vehicle required to be registered under this act unless there is attached to and displayed on the vehicle, as required by this chapter, a valid registration plate issued for the vehicle by the department for the current registration year.... “

“(2)... [A] person who violates subsection (1) is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or by a fine of not more than \$100.00, or both. However, if the vehicle is a commercial vehicle which is required to be registered according to the schedule of elected gross vehicle weights under section 801(1)(k), the fine which may be imposed shall not exceed \$500.00.”

MCL 257.255(1); MSA 9.1955(1) contains the following exception to the foregoing provisions:

“(1)... A registration plate shall not be required upon any wrecked or disabled vehicle, or vehicle destined for repair or junking, which is being transported or drawn upon a highway by a wrecker or a registered motor vehicle.”

B. Elements of the Offense

1. Defendant operated a vehicle on a highway; or,
2. Defendant owner permitted another person to operate his or her vehicle on a highway;
3. The vehicle was required to be registered with the Secretary of State; and,
4. The vehicle did not have a valid registration plate attached to and displayed on the vehicle for the current year.

C. Criminal Penalties

MCL 257.255(2); MSA 9.1955(2) provides for:

- Imprisonment up to 90 days; or,
- Fine up to \$100 (certain commercial vehicles, up to \$500); or,
- Both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. See MCL 257.321a; MSA 9.2021(1). At the present time this is not a reportable offense, unless the defendant fails to answer a citation or a notice to appear, or fails to comply with an order or judgment, in which case the Secretary of State shall suspend the license.

E. Issues

“Merely because the driver of an automobile cannot produce evidence of its registration does not, standing by itself, provide a basis for a reasonable belief that it is stolen. Although the law requires a registration certificate to be carried in Michigan-licensed vehicles and a failure to do so is a misdemeanor,... noncompliance by honest citizens occurs with such frequency that it is not reasonable to believe an automobile to be stolen from that alone.” *People v Marshall*, 25 Mich App 376, 379 (1970).

Use of a special registration plate on a vehicle other than the vehicle for which the plate was issued is a misdemeanor. The Secretary of State shall confiscate the plate of any person who is in violation. MCL 257.803c; MSA 9.2503(3).

These special registration plates include both personalized plates and veterans plates. See MCL 257.802–.804; MSA 9.2502–.2504 for descriptions of these specialized plates.

3.30 Operating an Unregistered Vehicle

A. Applicable Statute

MCL 257.215; MSA 9.1915 provides:

“It is a misdemeanor for any person to drive or move or for an owner knowingly to permit to be driven or moved upon any highway any vehicle of a type required to be registered hereunder which is not registered or for which a certificate of title has not been applied for or for which the appropriate fee has not been paid....”

Thirteen exceptions to the foregoing provision are found at MCL 257.216; MSA 9.1916. One in particular states: “For 3 days immediately following the date of a properly assigned title from any person other than a vehicle dealer, a registration need not be obtained for a motor vehicle driven or moved upon the highway for the sole purpose of transporting the vehicle in the most direct route from the place of purchase to a place of storage if the driver has in his or her possession the assigned title and a dated bill of sale.” MCL 257.216(1); MSA 9.1916(1).

B. Elements of the Offense

1. Defendant operated or knowingly permitted another person to operate a vehicle on the highway;
2. The vehicle was of a type required to be registered with the Secretary of State; and,
3. The vehicle was not registered, or certificate of title was not applied for, or appropriate fees were not paid.

C. Criminal Penalties

MCL 257.901(2); MSA 9.2601(2) provides the following penalties:

- Imprisonment up to 90 days; or,
- Fine up to \$100; or,
- Both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. See MCL 257.321a; MSA 2021(1). At the present time this is not a reportable offense unless the defendant fails to answer a citation or a notice to appear, or fails to comply with an order or judgment, in which case the Secretary of State shall suspend the license.

3.31 Producing False Evidence of Motor Vehicle Insurance

A. Applicable Statute

MCL 257.328(5)–(6); MSA 9.2028(5)–(6) provide:

“(5) An owner or operator of a motor vehicle who knowingly produces false evidence [of motor vehicle insurance] under this section is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or a fine of not more than \$1,000.00, or both.

“(6) Points shall not be entered on a driver’s record pursuant to section 320a for a violation of this section.”

MCL 257.328(7); MSA 9.2028(7) provides the following exception to the foregoing provisions:

“This section does not apply to the owner or operator of a motor vehicle that is registered in a state other than this state or a foreign country or province.”

B. Elements of the Offense

1. Defendant owned and operated, or operated, or allowed another to operate a motor vehicle on the highway;
2. Defendant was asked to produce evidence of insurance for the motor vehicle he or she operated; and,
3. Defendant knowingly produced false evidence of motor vehicle insurance.

C. Criminal Penalties

MCL 257.328(6); MSA 9.2028(6) provides for:

- Imprisonment up to one year; or,
- Fine up to \$1000; or,
- Both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. MCL 257.328(6); MSA 9.2028(6). At the present time this is not a reportable offense unless the defendant fails to answer a citation or a notice to appear, or fails to comply with an order or judgment, in which case the Secretary of State shall suspend the license.

E. Issues

There are four different offenses in Michigan dealing with an owner's obligation to have no-fault automobile insurance. Because these offenses are often confused with one another, they are listed here in order of severity:

1. Failing to Produce Evidence of Insurance is a civil infraction under MCL 257.328(1); MSA 9.2028(1). See Section 2.19 for this civil infraction.
2. Forging Proof of Insurance is a 90 day misdemeanor under MCL 257.905; MSA 9.2605. See Section 3.28 for this offense.
3. Producing False Evidence of Insurance is a one year misdemeanor under MCL 257.328(5); MSA 9.2028(5).
4. Operating a Motor Vehicle Without Insurance is a one year misdemeanor under the Insurance Code, MCL 500.3102(2); MSA 24.13102(2). This offense is not included in this benchbook.

3.32 Reproducing, Altering, Counterfeiting, Forging, or Duplicating Certificate of Title, or Using Such Certificate of Title, with Intent to Commit a Crime

A. Applicable Statute

MCL 257.222(6)(a)–(b); MSA 9.1922(6)(a)–(b) provides:

“(6) A person who intentionally reproduces, alters, counterfeits, forges, or duplicates a certificate of title or who uses a reproduced, altered, counterfeited, forged, or duplicated certificate of title shall be punished as follows:

(a) If the intent of reproduction, alteration, counterfeiting, forging, duplication, or use was to commit or aid in the commission of an offense punishable by imprisonment for 1 or more years, the person committing the reproduction, alteration, counterfeiting, forging, duplication, or use is guilty of a misdemeanor, punishable by imprisonment for a period equal to that which could be

imposed for the commission of the offense the person had the intent to aid or commit. The court may also assess a fine of not more than \$10,000.00 against the person.

(b) If the intent of reproduction, alteration, counterfeiting, forging, duplication, or use was to commit or aid in the commission of an offense punishable by imprisonment for not more than 1 year, the person committing the reproduction, alteration, counterfeiting, forging, duplication, or use is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or a fine of not more than \$1,000.00, or both.”

B. Elements of the Offense

1. Defendant reproduced, altered, counterfeited, forged, or duplicated a certificate of title; or,
2. Defendant used a reproduced, altered, counterfeited, forged, or duplicated certificate of title; and,
3. With such certificate of title, defendant intended to commit or aid in the commission of a crime.

C. Criminal Penalties

MCL 257.222(6)(a); MSA 9.1922(6)(a) provides the following penalties, which depend upon the length of imprisonment for the intended crime.

1. If the intended crime is punishable by imprisonment for more than one year:
 - Imprisonment for a period equal to that which could be imposed for the commission of the crime; and,
 - Fine up to \$10,000.
2. If the intended crime is punishable by imprisonment for not more than one year:
 - Imprisonment up to one year; or,
 - Fine up to \$1,000; or,
 - Both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. MCL 257.321a; MSA 9.2021(1). At the present time this is not a reportable offense unless the defendant fails to answer a citation or a notice to appear, or fails to comply with

an order or judgment, in which case the Secretary of State shall suspend the license.

E. Issues

Even though §222(6)(a) says the defendant shall be guilty of a misdemeanor, the penalty provision states that the period of imprisonment is equal to that which could be imposed for the crime the defendant intended to commit.

This criminal offense is distinguishable from False Application for Title, a felony, under MCL 257.254; MSA 9.1954. Specific intent to fraudulently pass title is not an element of making false application for certificate of title; intent can be inferred from the other necessary elements. *See* section 7.5 in Volume 2 of the Traffic Benchbook-Revised Edition.

3.33 Temporary Registration Violations

A. Applicable Statute

MCL 257.226b(1)–(2); MSA 9.1926(2)(1)–(2) provides:

“(1) A temporary registration may be issued to an owner of a vehicle. The registration shall be valid for 14 days from date of issue, and shall be in a form as determined by the secretary of state. A fee shall be collected for each temporary registration as provided in section 802.

“(2) A vehicle which has a temporary registration shall not be used for the transportation of passengers for hire, for the transportation of goods, wares, or merchandise, or [for] draw[ing] other vehicles transporting goods, wares, or merchandise.”

B. Elements of the Offense

1. Defendant was issued a temporary registration for his or her vehicle; and,
2. During the time that the temporary registration was valid (14 days from the date of issue), defendant transported passengers for hire, or transported goods, wares, or merchandise, or drew other vehicles transporting goods, wares, or merchandise.

C. Criminal Penalties

MCL 257.901(2); MSA 9.2601(2) provides for:

- Imprisonment up to 90 days; or,
- Fine up to \$100; or,
- Both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. MCL 257.321a; MSA 9.2021(1). At the present time this is not a reportable offense unless the defendant fails to answer a citation or a notice to appear, or fails to comply with an order or judgment, in which case the Secretary of State shall suspend the license.

3.34 Unlawful Lending or Use of Title, Registration Certificate, Plate, or Permit

A. Applicable Statute

MCL 257.256(1)–(3); MSA 9.1956(1)–(3) provides:

“(1) A person shall not lend to another person, or knowingly permit the use of, any certificate of title, registration certificate, registration plate, special plate, or permit issued to him or her if the person receiving or using the certificate of title, registration certificate, registration plate, or permit would not be entitled to the use thereof. A person shall not carry or display upon a vehicle any registration certificate or registration plate not issued for the vehicle or not otherwise lawfully used under this act.

“(2) [A] person who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or by a fine of not more than \$100.00, or both.

“(3) A person who displays upon a commercial vehicle which is required to be registered according to the schedule of elected gross vehicle weights under section 801(1)(k) any registration plate not issued for the vehicle or not otherwise lawfully used under this act is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or by a fine of not more than \$500.00, or both.”

B. Elements of the Offense

Both the lender and borrower are liable under this statute:

1. Defendant made a loan to another person, or knowingly permitted another person to use a title, registration certificate, plate, or permit that was issued to the defendant; and the other person was not otherwise entitled to its use.

or

2. The other person carried or displayed on a vehicle a registration certificate or plate not issued for that vehicle.

C. Criminal Penalties

MCL 257.256(2) and (3); MSA 9.1956(2) and (3) provide for:

- Imprisonment up to 90 days; or,
- Fine up to \$100 (certain commercial vehicles, up to \$500); or,
- Both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. See MCL 257.321a; MSA 9.2021(1). At the present time this is not a reportable offense, unless the defendant fails to answer a citation or a notice to appear, or fails to comply with an order or judgment, in which case the Secretary of State shall suspend the license.

E. Issues

A defendant dealer was held to be in violation of MCL 257.256; MSA 9.1956 when he allowed his employees, including the defendant driver, regular access to his automobile dealer plates for their personal use. *Wieland v Kenny*, 385 Mich 654, 658 (1971).

Defendant dealer loaned another its dealer license plate for the limited purpose of driving a newly purchased automobile to another location. There was no improper loan of the dealer plate or continued improper use of the plate with the dealers knowledge and consent as in *Wieland*, above. *McCroskey v Gene Deming Motor Sales, Inc*, 94 Mich App 309, 313–314 (1979).

Part E — Other Misdemeanors Found in the Michigan Vehicle Code

3.35 Disobeying the Direction of a Police Officer Who Is Regulating Traffic

A. Applicable Statute

MCL 257.602; MSA 9.2302 provides:

“A person shall not refuse to comply with a lawful order or direction of a police officer when that officer, for public interest and safety, is guiding, directing, controlling, or regulating traffic on the highways of this state.”

B. Elements of the Offense

1. Defendant refused to comply with a lawful order or direction of a police officer; and,
2. At that time, a police officer was guiding, directing, controlling, or regulating traffic for public interest and safety.

C. Criminal Penalties

MCL 257.901(2); MSA 9.2601(2) provides for:

- Imprisonment up to 90 days; or,
- Fine up to \$100; or,
- Both.

D. Licensing Sanctions

Two points. MCL 257.320a(1)(n); MSA 9.2020(1)(1)(n). The Secretary of State has interpreted “[a]ll other moving violations” to include this offense. However, there is no requirement that defendant must be operating a vehicle to commit this offense. For example, defendant could commit this offense if he or she was a pedestrian, a vendor or a solicitor at the time that he or she disobeyed the police officer. See OAG, 1955, No 2098 (July 13, 1955). In such cases, this would not be considered a moving violation.

E. Issues

See Section 7.4 in Volume 2 of the *Traffic Benchbook* for summaries of the four felony offenses for fleeing and eluding a police officer under MCL 257.602a; MSA 9.2302(1).

3.36 Drag Racing

A. Applicable Statute

MCL 257.626a; MSA 9.2326(1) provides:

“It shall be unlawful for any person to operate any vehicle upon any highway, or any other place open to the general public, including any area designated for the parking of motor vehicles, within this state, in a speed or acceleration contest or for the purpose of making a speed record, whether from a standing start or otherwise over a measured or unmeasured distance, or in a drag race herein defined.

“‘Drag racing’ means the operation of 2 or more vehicles from a point side by side at accelerating speeds in a competitive attempt to out-distance each other over a common selected course or where timing is involved or where timing devices are used in competitive accelerations of speeds by participating vehicles. Persons rendering assistance in any manner to such competitive use of vehicles shall be equally charged as participants. The operation of 2 or more vehicles either at speeds in excess of prima facie lawfully established speeds or rapidly accelerating from a common starting point to a speed in excess of such prima facie lawful speed is prima facie evidence of drag racing and is unlawful.”

B. Elements of the Offense

1. Defendant operated a vehicle on a highway or any other place open to the general public, including parking areas; and
2. At that time, defendant was participating in a speed or acceleration contest, or was driving for the purpose of making a speed record, or was participating in a “drag race” as defined above.

C. Criminal Penalties

MCL 257.901(2); MSA 9.2601(2) provides for:

- Imprisonment up to 90 days; or,
- Fine up to \$100; or,
- Both.

D. Licensing Sanctions

Four points. MCL 257.320a(1)(h); MSA 9.2020(1)(1)(h).

3.37 Failing to Answer Citation, Appear in Court, or Comply with an Order or Judgment

A. Applicable Statute Paraphrased

MCL 257.321a(1); MSA 9.2021(1)(1) imposes misdemeanor sanctions of up to 93 days imprisonment and/or a \$100.00 fine for the following:

- Failure to answer a citation or a notice to appear in court for a violation reportable to the Secretary of State under MCL 257.732; MSA 9.2432 or a local ordinance substantially corresponding to a violation that is reportable under Vehicle Code §732.*
- Failure to comply with an order or judgment of the court, including, but not limited to, paying all fines, costs, fees, and assessments.

B. Elements of the Offense

This statute establishes one misdemeanor offense that can be committed two ways:

1. Defendant failed to answer a citation or notice to appear for an offense reportable to the Secretary of State under Vehicle Code §732, or for any matter pending; or,
2. Defendant failed to comply with an order of the court, including but not limited to paying all fines, costs, fees, and assessments.

These offenses are commonly referred to as failure to appear in court (FAC) and failure to comply with judgment (FCJ).

C. Criminal Penalties

MCL 257.321a(1); MSA 9.2021(1)(1) provides for:

- Imprisonment up to 93 days; or,
- Fine up to \$100; or,
- Both.

D. Licensing Sanctions

1. In addition to misdemeanor penalties, license suspension can result from a person's failure to answer a citation or notice to appear in court or failure to comply with a judgment. Under MCL 257.321a(2)–(4); MSA 9.2021(1)(2)–

*See Section 2.12(C) of Volume 2 of the *Traffic Benchbook* for a list of violations reportable under §732.

(4), the court is required to notify the person that license suspension may result from his or her inaction. If the person does not appear or comply with the court's order or judgment within a stated time after receiving notice from the court, the court must report this failure to the Secretary of State. Upon receipt of the report from the court, the Secretary of State is to immediately suspend the person's license. The time requirements contained in the court's notices differ depending upon the charges brought against the person.

- In cases involving offenses other than certain drunk driving and alcohol-related crimes,* the notice from the court must be mailed to the person's last known address at least 28 days after the person fails to appear or comply with an order or judgment. The notice shall state that the person's license will be suspended if he or she fails to appear or to comply with the court's order or judgment within 14 days of issuance of the notice. If the person fails to comply with this notice, the court must notify the Secretary of State within 14 days. The Secretary of State will then immediately suspend the person's license and notify the person by regular mail sent to the person's last known address. MCL 257.321a(2); MSA 9.2021(1)(2).
- In cases involving parking violations, the court may give the defendant notice and ten days to appear if the defendant fails to answer two or more handicap parking violation notices or citations, or six or more parking violation notices or citations. If the defendant fails to appear or comply within ten days, the Secretary of State shall not issue or renew a driver's license to the defendant until the defendant resolves all outstanding matters and pays to the court a \$25 driver's license clearance fee. MCL 257.321a(7); MSA 9.2021(1)(7).

*These offense are listed in MCL 257.321a(3); MSA 9.2021(1)(3), which is addressed at Section 2.13 of Volume 2 of the *Traffic Benchbook*.

MCL 257.321a(5); MSA 9.2021(1)(5) requires that a license suspension shall remain in effect until both of the following occur:

- The court informs the Secretary of State that the defendant has appeared before the court and all matters relating to the violation are resolved; and,
 - The defendant has paid to the court a \$25 driver's license clearing fee for each failure to appear or failure to comply with a court order.
2. The last line of §321a(1) says, "A violation of this subsection shall not be considered a violation for any purpose under section 320a." Therefore, no points will be assessed on defendant's driving record.

E. Issues

The 1993 *Traffic Benchbook* Advisory committee recommends that courts should not routinely initiate a prosecution for defendant's failure to pay a fine. If the fine is for a civil infraction violation, failure to pay results in a mandatory license suspension; this seems adequate. If the fine is for a misdemeanor offense, failure to pay will generally result in a probation violation and a mandatory license suspension. Turning this matter over to the prosecuting

attorney for prosecution as a separate criminal offense seems duplicitous, unnecessary, costly, and rather highhanded, in the committee's opinion. Prosecution under this section as a separate criminal offense should be reserved for exceptional cases.

When the defendant has appeared before the court, and all matters relating to the violation or to the noncompliance are resolved, and the defendant has paid to the court the \$25 driver license clearance fee, the court shall give to the defendant a copy of the information being sent to the Secretary of State. Upon showing that copy, a person shall not be arrested or issued a citation for driving on a suspended license on the basis of any matter resolved, even if the information sent to the Secretary of State has not been received or recorded. MCL 257.321a(10); MSA 9.2021(1)(10).

The court shall send 60% of each driver's license clearance fee received to the Secretary of State on a monthly basis. The Secretary of State shall deposit this amount in the state general fund and it shall be used to defray the expenses of the Secretary of State in processing the suspension and reinstatement of driver licenses. MCL 257.321a(11); MSA 9.2021(1)(11).

Any policeman, law enforcing officer, or judicial officer who has notice of the license suspension or revocation from the Secretary of State shall obtain such license from the defendant and forward it to the Secretary of State. MCL 257.321b; MSA 9.2021(2).

3.38 Failing to Disclose Odometer Mileage

A. Applicable Statute

MCL 257.233a(1); MSA 9.1933(1)(1) provides:

“When the owner of a registered motor vehicle transfers his or her title or interest in that vehicle, the transferor shall present to the transferee before delivery of the vehicle, written disclosure of odometer mileage by means of the certificate of title or a written statement signed by the transferor including the transferor's printed name, containing... [certain information].”

B. Elements of the Offense

1. Defendant transferred his or her interest in a motor vehicle to another person; and,
2. Defendant failed to disclose the odometer mileage, or misrepresented, in writing, the actual mileage.

C. Criminal Penalties

MCL 257.901(2); MSA 9.2601(2) provides for:

- Imprisonment up to 90 days; or,
- Fine up to \$100; or,
- Both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. See MCL 257.321a; MSA 9.2021(1). At the present time this is not a reportable offense, unless the defendant fails to answer a citation or a notice to appear, or fails to comply with an order or judgment, in which case the Secretary of State shall suspend the license.

E. Issues

“The odometer statute in Michigan does not require the intent to defraud.... The main purpose behind the odometer statute is to protect a buyer from being defrauded by a seller who fraudulently turns back the odometer.” *People v Houseman*, 128 Mich App 17, 22 (1983).

“[F]ailure to comply with the odometer statute requirements merely renders the transaction voidable by the purchaser.” It does not automatically void the transaction. *Whitecraft v Wolfe*, 148 Mich App 40, 54 (1985).

Civil damages: A person who, with intent to defraud, violates this law is liable in an amount equal to 3 times the amount of actual damages sustained or \$1,500, whichever is greater, plus costs and reasonable attorney fees in the case of a successful recovery of damages. MCL 257.233a(15); MSA 9.1933 (1)(15).

The odometer statute also applies to a new or used vehicle dealer, a lessor of a leased vehicle, and an auction dealer or vehicle salvage pool operator. See MCL 257.233a(11)–(13); MSA 9.1933(1)(11)–(13).

Odometer tampering is a felony under MCL 257.233a(6)–(7); MSA 9.1933(6)–(7). See Section 7.9 in Volume 2 of the *Traffic Benchbook*.

3.39 Failing to Stop for School Crossing Guard

A. Applicable Statute:

MCL 257.613d(1)–(2); MSA 9.2313(4)(1)–(2) provides:

“(1) A driver of a motor vehicle who fails to stop when a school crossing guard is in a school crossing and is

holding a stop sign in an upright position visible to approaching vehicular traffic is guilty of a misdemeanor.

“(2) In a proceeding for a violation of this section, proof that the particular vehicle described in the citation, complaint, or warrant was used in the violation, together with proof that the defendant named in the citation, complaint, or warrant was the registered owner of the vehicle at the time of the violation, constitutes in evidence a presumption that the registered owner of the vehicle was the driver of the vehicle at the time of the violation.”

B. Elements of the Offense

1. Defendant drove a motor vehicle;
2. At that time, a school crossing guard, in a school crossing, held a stop sign in an upright position visible to defendant as he or she was approaching; and,
3. Defendant failed to stop.

C. Criminal Penalties

MCL 257.901(2); MSA 9.2601(2) provides for:

- Imprisonment up to 90 days; or,
- Fine up to \$100; or,
- Both.

D. Licensing Sanctions

Three points. MCL 257.320a(1)(k); MSA 9.2020(1)(1)(k).

The Secretary or State has interpreted “disobeying a traffic signal or stop sign, or improper passing” to include the offense. A traffic signal includes “any device... whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.” MCL 257.72; MSA 9.1872. A school crossing guard manually operates a stop sign to alternately direct traffic to stop and to proceed.

3.40 Failing to Yield to Handicapped Individual

A. Applicable Statute

MCL 257.612(4); MSA 9.2312(4) provides:

“A driver of a vehicle who approaches a person using a wheelchair or a device to aid the person to walk at a crosswalk or any other pedestrian crossing shall take such precautions as may be necessary to avoid accident or injury to the person using the wheelchair or device. A person who violates this subsection is guilty of a misdemeanor.”

B. Elements of the Offense

1. Defendant drove a vehicle;
2. Defendant approached a person using a wheelchair or other walking aid;
3. The person was at a crosswalk or other pedestrian crossing; and,
4. Defendant failed to take necessary precautions to avoid an accident or injury to the person.

C. Criminal Penalties

MCL 257.901(2); MSA 9.2601(2) provides for:

- Imprisonment up to 90 days; or,
- Fine up to \$100; or,
- Both.

D. Licensing Sanctions

Two points. MCL 257.320a(1)(n); MSA 9.2020(1)(1)(n). The Secretary of State has interpreted “[a]ll other moving violations” to include this offense.

E. Issues

The phrase “a device to aid the person to walk” may be interpreted to include the types of devices commonly used by blind persons... a cane or a guide dog, for example.

3.41 Falsifying or Improperly Disposing of a Citation

A. Applicable Statute

MCL 257.728d; MSA 9.2428(4) provides:

“Whoever knowingly falsifies a citation or copies thereof or a record of the issuance of same, or disposes of such citation, copy or record, in a manner other than as required in this act, or attempts so to falsify or dispose, or attempts to incite or procure another so to falsify or dispose shall be fined not more than \$500.00 or imprisoned in the county jail for a term not to exceed 1 year, or both.”

B. Elements of the Offense

This statute establishes one misdemeanor offense that can be committed three ways:

1. Defendant knowingly falsified a citation, a copy of a citation, or a record of the issuance of a citation, or attempted to do the same; or,
2. Defendant improperly disposed of a citation, or attempted to do the same; or,
3. Defendant attempted to incite, or procured another to falsify or improperly dispose of a citation.

C. Criminal Penalties

MCL 257.728d; MSA 9.2428(4) provides for:

- Imprisonment up to one year; or,
- Fine up to \$500; or,
- Both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. See MCL 257.321a; MSA 9.2021(1). At the present time this is not a reportable offense, unless the defendant fails to answer a citation or a notice to appear, or fails to comply with an order or judgment, in which case the Secretary of State shall suspend the license.

3.42 Improper Use of Disabled Person Identification

A. Applicable Statute

MCL 257.675(15); MSA 9.2375(15) provides as follows:

“(15) A person who intentionally makes a false statement of material fact or commits or attempts to commit a deception or fraud on a medical statement attesting to a disability, submitted in support of an application for a certificate of identification, windshield placard, free parking sticker, special registration plate, or tab for persons with disabilities under this section, section 803(d) [regarding disabled person plates], or section 803f [regarding disabled veterans and disabled person tabs], is guilty of a misdemeanor, punishable by a fine of not more than \$500.00 or imprisonment for not more than 30 days, or both.”

MCL 257.675(16)(a)–(f); MSA 9.2375(16)(a)–(f) further provides:

“(16) A person who commits or attempts to commit a deception or fraud by 1 or more of the following methods is guilty of a misdemeanor, punishable by a fine of not more than \$500.00 or imprisonment for not more than 30 days, or both:

(a) Using a certificate of identification, windshield placard, or free parking sticker issued under this section or by another state to provide transportation to a disabled person, when the person is not providing transportation to a disabled person.

(b) Altering, modifying, or selling a certificate of identification, windshield placard, or free parking sticker issued under this section or by another state.

(c) Copying or forging a certificate of identification, windshield placard, or free parking sticker described in this section or selling a copied or forged certificate, placard, or sticker described in this section. In the case of a violation of this subdivision, the fine described in this subsection shall be not less than \$250.00.

(d) Using a copied or forged certificate of identification, windshield placard, or free parking sticker described in this section.

(e) Making a false statement of material fact to obtain or assist an individual in obtaining a certificate, placard, or sticker described in this section, a special registration plate under section 803d [regarding disabled person plates], or a tab for persons with disabilities under section 803f [regarding disabled veterans and disabled person tabs].

(f) Knowingly using or displaying a certificate, placard, or sticker described in this section that has been canceled by the secretary or state.”

B. Elements of the Offense

MCL 257.675(16)(a)–(f); MSA 9.2375(16)(a)–(f) establishes six misdemeanor offenses:

1. Using a disabled person identification to park without transporting a disabled person:
 - Defendant was issued a disabled person identification to transport a disabled person; and,
 - Defendant used the disabled person identification for the purpose of parking a vehicle in a courtesy disabled person’s spot, but did not transport a disabled person.
2. Altering, modifying, or selling a disabled person identification.
3. Copying or forging a disabled person identification, or selling a copied or forged disabled person identification.
4. Using a copied or forged disabled person identification.
5. Making a false statement of material fact to obtain (or to assist another to obtain) a disabled person identification.
6. Knowingly using or displaying a disabled person identification that has been canceled by the Secretary of State.

C. Criminal Penalties

MCL 257.675(15) and (16); MSA 9.2375(15) and (16) provide for:

- Imprisonment up to 90 days; or,
- Fine up to \$100; or,
- Both.

But see §675(16)(c) (copying or forging a disabled person identification, or selling a copied or forged disabled person identification), which requires a minimum fine of \$250 for a violation of that subsection.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. See MCL 257.321a; MSA 9.2021(1). At the present time this is not a reportable offense, unless the defendant fails to answer a citation or a notice to appear, or fails to comply with an order or judgment, in which case the Secretary of State shall suspend the license.

E. Issues

Upon conviction of a violation under §675, the court may confiscate the disabled person identification and return it to the Secretary of State together with a copy of the sentence imposed. MCL 257.675(14); MSA 9.2375(14).

3.43 Improper Use of Emergency Lights

A. Applicable Statute Paraphrased

MCL 257.698(5)(a)–(k); MSA 9.2398(5)(a)–(k) provides that use or possession of flashing, rotating, or oscillating lights of any color is prohibited except under the following circumstances:

(a) A police vehicle in the performance of police duties may use red or blue lights.

(b) A fire vehicle or ambulance, publicly or privately owned, as required for safety may use red lights.

(c) An authorized emergency vehicle may use red lights, but only to respond to emergency call. Authorized emergency vehicles include “vehicles of the fire department, police vehicles, ambulances, privately owned motor vehicles of volunteer or paid firemen, or privately owned motor vehicles of volunteer ambulance drivers or licensed ambulance drivers or attendants as are authorized by the department of state police.” MCL 257.2; MSA 9.1902.

(d) A government vehicle to remove or control ice and snow, may use amber lights.

(e) A vehicle used for the cleanup of spills or emergencies on the highway may use amber lights when responding to such spills or emergencies.

(f) The following vehicles may use amber lights:

- Public service utility vehicles.
- Trash collecting vehicles.
- Automobile service cars or wreckers.
- Highway repair vehicles.
- Peace officers vehicles.
- Rural mail carrier or newspaper delivery vehicles.
- Snow removal vehicles.
- Authorized private security guard vehicles.
- Escort vehicles for oversize loads.
- National Guard or U.S. military vehicles.
- Vehicles used to tow an implement for husbandry.

In addition, a wrecker may use red lights when engaged in removing or assisting a vehicle at an accident.

(g) A funeral procession vehicle may use purple or amber lights during the funeral procession.

(h) An authorized emergency vehicle may use white lights in conjunction with the red lights authorized at (c) above.

(i) A physician responding to an emergency in a privately owned vehicle may use red lights.

(j) A public transit vehicle may use white lights when boarding or discharging passengers or under conditions that hinder the visibility of the public transit vehicle.

(k) A person engaged in the manufacture, sale, or repair of lights shall not activate the lights on the highway unless authorized to do so.

A security guard agency or alarm company in a privately owned vehicle may use amber lights, but not on a public highway when in motion. MCL 257.698(7); MSA 9.2398(7).

B. Elements of the Offense

Defendant used or possessed emergency lights when he or she was not authorized to do so.

C. Criminal Penalties

MCL 257.901(2); MSA 9.2601(2) provides for:

- Imprisonment up to 90 days; or,
- Fine up to \$100; or,
- Both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. See MCL 257.321a; MSA 9.2021(1). At the present time this is not a reportable offense, unless the defendant fails to answer a citation or a notice to appear, or fails to comply with an order or judgment, in which case the Secretary of State shall suspend the license.

3.44 Improper Use of Emergency Vehicle

A. Applicable Statutes

MCL 257.603(2)–(3); MSA 9.2303(2)–(3) set forth the privileges that a driver of an authorized emergency vehicle may exercise, as follows:

“(2) The driver of an authorized emergency vehicle when responding to an emergency call, but not while returning from an emergency call, or when pursuing or apprehending a person who has violated or is violating the law or is charged with or suspected of violating the law, may exercise the privileges set forth in this section, subject to conditions of this section.

“(3) The driver of an authorized emergency vehicle may do any of the following:

- (a) Park or stand, irrespective of this act.
- (b) Proceed past a red or stop signal or stop sign, but only after slowing down as necessary for safe operation.
- (c) Exceed the prima facie speed limits so long as he or she does not endanger life or property.
- (d) Disregard regulations governing direction of movement or turning in a specified direction.”

MCL 257.603(4)–(5); MSA 9.2303(4)–(5) set forth the circumstances under which the foregoing privileges apply:

“(4) The exemptions granted in this section to an authorized emergency vehicle apply only when the driver of the vehicle while in motion sounds an audible signal by bell, siren, air horn, or exhaust whistle as may be reasonably necessary...and when the vehicle is equipped with [and] displaying [emergency lights].”

“(5) A police vehicle shall retain the exemptions granted in this section to an authorized emergency vehicle without sounding an audible signal if the police vehicle is engaged in an emergency run in which silence is required.”

Authorized emergency vehicles include “vehicles of the fire department, police vehicles, ambulances, privately owned motor vehicles of volunteer or paid firemen, or privately owned motor vehicles of volunteer ambulance drivers or licensed ambulance drivers or attendants as are authorized by the department of state police.” MCL 257.2; MSA 9.1902.

B. Elements of the Offense

This statute clearly sets out the elements of this offense.

C. Criminal Penalties

MCL 257.901(2); MSA 9.2601(2) provides for:

- Imprisonment up to 90 days; or,
- Fine up to \$100; or,
- Both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. See MCL 257.321a; MSA 9.2021(1). At the present time this is not a reportable offense, unless the defendant fails to answer a citation or a notice to appear, or fails to comply with an order or judgment, in which case the Secretary of State shall suspend the license.

E. Issues

“The speed limitation set forth in this chapter shall not apply to vehicles when operated with due regard for safety under the direction of the police when traveling in emergencies or in the chase or apprehension of violators of the law or of persons charged with or suspected of a violation, nor to fire department or

fire patrol vehicles when traveling in response to a fire alarm, nor to public or private ambulances when traveling in emergencies.... This exemption shall not however protect the driver of the vehicle from the consequences of a reckless disregard of the safety of others.” MCL 257.632; MSA 9.2332.

“The chase or apprehension of violators of the law or persons suspected of a violation does not necessarily constitute an emergency situation....[T]he existence of an emergency is but one factor to be considered in evaluating the reasonableness of an officer’s conduct. Other factors to be considered... include speed of pursuit, the area of pursuit, weather and road conditions, the presence of pedestrians and other traffic, the presence or absence of audible and visible warnings, and the reason the officers were pursuing the fleeing vehicle.” *Fiser v City of Ann Arbor*, 417 Mich 461, 472 (1983).

The driver of an authorized emergency vehicle has a duty to drive with due regard for the safety of others and does not have an absolute right to blindly proceed through a red light or stop sign. *Placek v City of Sterling Heights*, 405 Mich 638, 670 (1979).

3.45 Reckless Driving

A. Applicable Statute

MCL 257.626(a)–(b); MSA 9.2326(a)–(b) provide:

“(a) Any person who drives any vehicle upon a highway or a frozen public lake, stream, or pond or other place open to the general public, including any area designated for the parking of motor vehicles, within this state, in wilful or wanton disregard for the safety of persons or property is guilty of reckless driving.

“(b) Every person convicted of reckless driving shall be punished by imprisonment in the county or municipal jail for a period of not more than 90 days or by a fine of not more than \$100.00, or both.”

B. Elements of the Offense

1. Defendant drove a vehicle on a highway, or a frozen public lake, stream, or pond, or place open to the general public, including parking areas; and,
2. At that time, defendant was driving in wilful or wanton disregard for the safety of persons or property.

C. Criminal Penalties

MCL 257.626(b); MSA 9.2326(b) provides for:

- Imprisonment in the county jail up to 90 days; or,
- Fine up to \$100; or,
- Both.

D. Licensing Sanctions

1. Six points. MCL 257.320a(1)(d); MSA 9.2020(1)(1)(d).
2. License suspension for 90 days is mandatory for a conviction of reckless driving. MCL 257.319(3)(b); MSA 9.2019(3)(b).
3. License revocation is required for a person who has two convictions of reckless driving within 7 years. MCL 257.303(2)(a); MSA 9.2003(2)(a).
4. The Secretary of State shall not issue a license to a “habitually reckless driver.” Two reckless driving convictions within seven years is prima facie evidence that the person is a “habitually reckless driver.” MCL 257.303(1)(i); MSA 9.2003(1)(i). In theory, the license would be denied for life. But in practice, a record for conviction of reckless driving may be destroyed after ten years, so it is doubtful the license would be denied for life. See MCL 257.208(2); MSA 9.1908(2) (destruction of records).

E. Issues

Mere falling asleep is not gross negligence; gross negligence requires wilful or wanton misconduct. “To constitute gross negligence in falling asleep while driving, there must have been prior warning of the likelihood of sleep that continuing to drive constitutes reckless disregard of consequences.” *Boos v Sauer*, 266 Mich 230, 233 (1934).

“[M]ere excessive speed does not constitute gross negligence....Intoxication is not necessarily indicative of willful and malicious misconduct.” *Bielawski v Nicks*, 290 Mich 401, 404–405 (1939).

A driver may be guilty of driving a vehicle at an unlawful or reckless rate of speed, although the speed of the vehicle is shown to be less than the legal maximum. *Hammock v Sims*, 313 Mich 248, 257 (1946).

Mere failure or inadvertence or lack of care is, at most ordinary negligence and will not sustain charge of recklessness or gross negligence. *Walden v Green*, 346 Mich 21, 24 (1956).

In summary, the difference between reckless driving, a misdemeanor, and careless driving, a civil infraction, is the degree of negligence. The court should consider the manner of operating the vehicle, not the accident that results. Reckless driving requires gross negligence; it is defined as driving in “wilful or

wanton disregard for the safety of persons or property.” MCL 257.626a; MSA 9.2326(1). Careless driving requires ordinary negligence, it is defined as operating a motor vehicle in a “negligent manner likely to endanger any person or property, but without wantonness or recklessness.” MCL 257.626b; MSA 9.2326(2).

Gross negligence means more than carelessness. In *People v Orr*, 243 Mich 300, 307 (1928), the Michigan Supreme Court articulated three necessary elements that must be found:

“(1) Knowledge of a situation requiring the exercise of ordinary care and diligence to avert injury to another.

“(2) Ability to avoid the resulting harm by ordinary care and diligence in the use of the means at hand.

“(3) The omission to use such care and diligence to avert the threatened danger when to the ordinary mind it must be apparent that the result is likely to prove disastrous to another.”

Careless driving is a civil infraction, and therefore not a lesser included offense of a criminal offense. If the prosecuting attorney, in a plea bargain, decides to reduce the charge from reckless driving to careless driving, it is necessary to have a citation issued for a civil infraction, to which the defendant can then plead responsible. See Section 2.12 of this volume for a discussion of careless driving.

3.46 Tampering With or Removing Traffic Control Devices

A. Applicable Statutes

MCL 257.616; MSA 9.2316 provides:

“No person shall without lawful authority attempt to or in fact alter, deface, injure, knockdown, or remove any traffic-control device or any railroad sign or signal or any inscription, shield, or insignia thereon, or any other part thereof.”

MCL 257.70; MSA 9.1870 provides that traffic devices include:

“[a]ll signs, signals, markings, and devices not inconsistent with this act placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic.”

B. Elements of the Offense

1. Defendant altered, defaced, injured, knocked down, or removed a traffic-control device or railroad sign, or attempted to do such; and,
2. Defendant did so without lawful authority.

C. Criminal Penalties

MCL 257.901(2); MSA 9.2601(2) provides for:

- Imprisonment up to 90 days in jail; or,
- Fine up to \$100; or,
- Both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. See MCL 257.321a; SMA 9.2021(1). The conviction is not reported to the Secretary of State unless the defendant fails to answer a citation or a notice to appear, or fails to comply with an order or judgment, in which case the Secretary of State shall suspend the license.

3.47 Transporting or Possessing Open Alcohol in a Motor Vehicle

A. Applicable Statute

MCL 257.624a; MSA 9.2324(1) provides as follows:

“(1) Except as provided in subsection (2), a person who is an operator or occupant shall not transport or possess alcoholic liquor in a container that is open or uncapped or upon which the seal is broken within the passenger compartment of a vehicle upon a highway, or within the passenger compartment of a moving vehicle in any place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, in this state.

“(2) A person may transport or possess alcoholic liquor in a container that is open or uncapped or upon which the seal is broken within the passenger compartment of a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles in this state, if the vehicle does not have a

trunk or compartment separate from the passenger compartment, the container is enclosed or encased, and the container is not readily accessible to the occupants of the vehicle.

“(3) A person who violates this section is guilty of a misdemeanor.

“(4) This section does not apply to a passenger in a chartered vehicle authorized to operate by the state transportation department.”

B. Elements of the Offense

1. Defendant as an operator or occupant transported or possessed alcohol in a motor vehicle on a highway, or in any place open to the general public or generally accessible to motor vehicles, including an area designated for parking; and,
2. The alcohol was in a container that was open, uncapped, or had a broken seal and was within the passenger compartment of the vehicle.

C. Criminal Penalties

MCL 257.901(2); MSA 9.2601(2) provides for:

- Imprisonment up to 90 days; or,
- Fine up to \$100; or,
- Both.

D. Licensing Sanctions

Two points. MCL 257.320a(1)(l); MSA 9.2020(1)(1)(l).

E. Issues

MCL 257.624a(2); MSA 9.2324(1)(2) provides that a person does not violate this statute by transporting open intoxicants in the passenger compartment of a motor vehicle that does not have a separate trunk compartment if:

- The open container is enclosed or encased; and,
- The open container is not readily accessible to the occupants of the vehicle.

This misdemeanor offense formerly appeared in the Michigan Liquor Control Law under MCL 436.34a; MSA 18.1005(1). The language of that statute was rewritten and now appears in the MVC under §624a. The new language in subsection (2) clarifies the responsibilities of person operating a motor vehicles

without a trunk or compartment separate from the passenger compartment. Moreover, the word “moving” was added to subsection (1) so that “tailgate” parties would not be made illegal. See 1991 PA 98, effective August 9, 1991.

3.48 Transporting or Possessing Alcohol in a Motor Vehicle by a Person Less than 21 Years of Age

A. Applicable Statute Paraphrased

MCL 257.624b(1)–(6); MSA 9.2324(2)(1)–(6) makes the following provision:

1. A person less than 21 years of age shall not transport or possess alcoholic liquor in a motor vehicle, as an owner or occupant, unless the person is lawfully transporting the alcoholic liquor in the course of his or her employment. This section does not prevent a person less than 21 years of age from transporting alcoholic liquor if a person at least 21 years of age is present in the motor vehicle. A person who violates this subsection is guilty of a misdemeanor.
2. Within 30 days after a conviction for this offense, the arresting police officer may make a complaint to impound the motor vehicle. This subsection only applies when the person who was convicted was the operator of the motor vehicle. The court shall then issue to the owner of the motor vehicle an order to show cause why the motor vehicle should not be impounded.
3. If the court determines that the motor vehicle was being driven by a person less than 21 years of age with the consent or knowledge of the owner, the court may order the impoundment of the vehicle for not less than 15 days or more than 30 days. Impoundment shall not be ordered if the motor vehicle is needed by the owner in the direct pursuit of the owner’s employment or the actual operation of the owner’s business.
4. A person who transfers title to a motor vehicle for the purpose of avoiding this section is guilty of a misdemeanor.
5. A law enforcement agency shall notify the parents or guardians of all persons less than 18 years of age who are charged with a violation of this section.
6. Alcoholic liquor means that term as referred to in the Liquor Control Code of 1998.

B. Elements of the Offense

1. Defendant was less than 21 years of age and was the operator or occupant of a motor vehicle; and,
2. Defendant transported or possessed alcoholic liquor in the motor vehicle.

MCL 257.624b(1); MSA 9.2324(2)(1) provides exceptions for persons who are lawfully transporting alcoholic liquor as part of their employment, and persons who are accompanied by someone over 21 years of age in the motor vehicle.

C. Criminal Penalties

MCL 257.624b(1); MSA 9.2324(2)(1) provides for:

- Imprisonment for up to 90 days; or,
- Fine of up to \$100; or,
- Both.

D. Licensing Sanctions

Two points. MCL 257.320a(1)(l); MSA 9.2020(1)(1)(l).

E. Issues

In addition to the criminal penalties and licensing sanctions for this offense, the court may order impoundment of the vehicle for not less than 15 or more than 30 days. See MCL 257.624b(3); MSA 9.2324(2)(3).

